

PROB 12B
(7/93)FILED
Clerk
District Court*United States District Court*

for

NOV 18 2005

*the Northern Mariana Islands*For The Northern Mariana Islands
By _____
(Deputy Clerk)**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearings is Attached)

Name of Offender: Francisco Demapan Dela Cruz Case Number: CR 02-00003-001
Name of Sentencing Judicial: Alex R. Munson
Date of Original Sentence: March 15, 2003
Original Offense: Making Threats By Telephone, 18 U.S.C. § 844(E)

Original Sentence: 13 months imprisonment followed by three years supervised release with conditions to include obtain and maintain gainful employment; refrain from the use of any and all alcohol, participate in substance abuse treatment program approved by the U.S. Probation Office; undergo a mental health assessment approved by the U.S. Probation Office, and submit to any recommended treatment as a result of that assessment; pay restitution in the amount of \$2,158.50; not incur any new credit charges or open additional lines of credit without approval of the U.S. Probation Office; provide the U.S. Probation Office access to any requested financial information; make arrangements to pay his creditors outlined in the presentence investigation report; and perform 300 hours of community service under the direction of the United States Probation Office.

Type of Supervision: Supervised Release Date Supervision Commenced: April 2, 2004

PETITIONING THE COURT

☐ To extend the term of supervision for _____ years, for a total term of _____ years.

☒ To modify the conditions of supervision as follows:

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

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CAUSE

On September 2, 2005, the Ninth Circuit, in *United States v. Stephens*, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. § 3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.

To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated the offender's history of drug use, and the drug detection period of his drug of choice. Although alcohol and marijuana are identified drugs of choice, methamphetamine is considered one of the easily accessible drugs in this community and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of *United States v. Stephens* Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify the defendant's mandatory condition to set the maximum number of tests the defendant must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

The offender has agreed to the above modification and attached is a Probation From 49 Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with his consent.

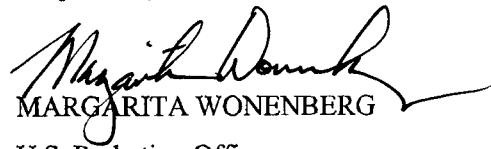
Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON

U.S. Probation Officer
Supervision Unit Leader

Date: 11/17/05

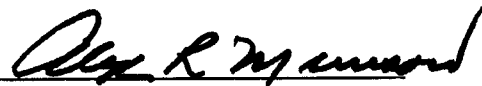
Respectfully submitted,

by: 
MARGARITA WONENBERG
U.S. Probation Officer

Date: 11/17/05

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other


Signature of Judicial Officer

11-18-05

Date